

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

DAVID STEVEN BRAUN,

Plaintiff,

vs.

FEDERAL BUREAU OF
INVESTIGATION,

Defendant.

CV 16-40-BU-BMM

ORDER

BACKGROUND

Plaintiff David Braun (Braun), appearing pro se, commenced this action against the Federal Bureau of Investigation (FBI), under the Privacy Act of 1974 (Privacy Act), 5 U.S.C. §§ 552a *et seq.* Braun seeks an order compelling the FBI to produce certain documents and information in its possession.

This case arises from an information request Braun submitted to the FBI on May 21, 2015. (Doc. 2-1). Braun requested that the FBI produce all records in its possession “generated by [his] contacts with the FBI over the years.” (Doc. 2-1 at 1). The FBI processed Braun’s request for information under the Privacy Act, and the Freedom of Information Act (FOIA), 5 U.S.C. § 552. The FBI identified 119 pages of documents that were responsive to Braun’s request. The FBI produced 108 pages. The FBI made redactions on some of pages produced. Eleven

pages were withheld in full. The FBI relied upon exemption (j)(2) of the Privacy Act, 5 U.S.C. § 552a(j)(2), and exemptions 3, 6, 7(C), and 7(E) of FOIA, 5 U.S.C. §§ 552(b)(3), (6), 7(C), 7(E), as legal authority for its decision to withhold certain information and documents. (Doc. 40-8).

Presently before the Court is Braun's motion for summary judgment, and the FBI's cross motion for summary judgment. Braun argues that the FBI unlawfully withheld and redacted certain documents. He seeks an order compelling the FBI to produce all of the documents and information it withheld.

The FBI argues that it has produced to Braun all documents and information to which Braun is entitled to receive under the Privacy Act, and FOIA. The FBI requests that this action be dismissed.

United States Magistrate Judge Jeremiah C. Lynch issued Findings and Recommendations in this matter on December 28, 2016. (Doc. 49). Judge Lynch determined that Braun's claims under the Privacy Act lack merit because the information and documents withheld by the FBI were exempt from production under exemption (j)(2) of the Privacy Act, and exemptions 3, 6, 7(C), and 7(E) of FOIA. Judge Lynch recommended that the FBI's motion for summary judgment be granted, and that Braun's motion for summary judgment be denied. Judge Lynch also recommended that this action be dismissed. (Doc. 49 at 19).

Braun objects to Judge Lynch's Findings and Recommendations in part. (Doc. 50). Braun states that he does not object to Judge Lynch's determination "that the requested [FBI] records were properly withheld." (Doc. 50 at 2). Braun states that he does object, however, to Judge Lynch's recommendation that this action be dismissed. *Id.* Braun argues that this action should remain open because he filed a motion to compel after Judge Lynch entered his Findings and Recommendations, and that motion will no longer exist if this case is dismissed. (Doc. 50 at 3). Braun's motion to compel related to a "claim" he purportedly submitted to the Office of Management and Budget (OMB) on January 9, 2017. Braun sought an order compelling OMB to process the claim. (Doc. 52 at 2). Judge Lynch denied the motion on January 30, 2017. (Doc. 58).

STANDARD OF REVIEW

The Court reviews de novo findings and recommendations to which objections are made. 28 U.S.C. § 636(b)(1). No review is required of proposed findings and recommendations to which no objection is made. *Thomas v. Arn*, 474 U.S. 140, 149-152 (1986).

DISCUSSION

The information and records withheld by the FBI consist of: (1) criminal investigation documents maintained in FBI's Central Record System (Doc. 40 at ¶¶

26-27); (2) investigative financial records and reports compiled by the FBI under 31 U.S.C. § 5311 (Doc. 40 at ¶¶ 32-37); (3) names of FBI employees, local law enforcement officers, and individual third parties identified in the investigative records requested by Braun (Doc. 40 at ¶¶ 42-46); and (4) documents describing the FBI's investigative techniques and guidelines. (Doc. 40 at ¶¶ 48-52). Judge Lynch did not err when he determined that these matters were properly withheld by the FBI. Such information and documents are exempt from production under exemption (j)(2) of the Privacy Act, 28 C.F.R. § 16.96(a)(1), and exemptions 3, 6, 7(C), and 7(E) of FOIA.

I find no error in Judge Lynch's Findings and Recommendations and adopt them in full. Accordingly, IT IS ORDERED:

1. The FBI's Motion for Summary Judgment (Doc. 35) is GRANTED.
2. Braun's Motion for Summary Judgment (Doc. 32) is DENIED.
3. This case is DISMISSED with prejudice.
4. The Clerk is directed to enter judgment accordingly.

DATED this 7th day of February, 2017.



Brian Morris
United States District Court Judge